

South Dakota Department of Human Services

Policy Title:	Enforcement, Sanctions, and Penalties for Violations of Individual Privacy		
Policy Number:	DHS-100-09	Version:	1.0
Approved By:	Betty Oldenkamp, DHS Secretary		
Effective Date:	April 14, 2003		

Purpose:

The intent of this policy is to specify enforcement, sanction, penalty, and disciplinary actions that may result from violation of DHS policies and procedures regarding the privacy and protection of an individual's protected health information or PHI and to offer guidelines on how to conform to the required standards.

This document contains guidance for developing procedures to implement this policy.

Policy:

1. General

- a. All employees, volunteers, interns and members of the DHS workforce must guard against improper uses or disclosures of a DHS client/patient or participant's PHI.
 - i. DHS employees, volunteers, interns and members of the DHS workforce who are uncertain if a disclosure is permitted are advised to consult with a supervisor in the DHS workplace. The DHS HIPAA Privacy Contact is a resource for any DHS workplace that cannot resolve a disclosure question, and may be consulted in accordance with the operational procedures of that DHS workplace.
- b. All employees are required to be aware of their responsibilities under DHS privacy policies.
 - i. DHS employees will be expected to sign a **DHS 2091**, "Privacy Program Statement of Understanding," indicating that they have been informed of the business practices in DHS as it relates to Privacy, and they understand their responsibilities to ensure the Privacy of DHS clients/patients and participants.

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- c. Supervisors are responsible for assuring that employees who have access to confidential information, whether it is electronic, hard copy, or orally, are informed of their responsibilities.
- d. DHS employees who violate DHS policies and procedures regarding the safeguarding of an individual's PHI are subject to disciplinary action by DHS up to and including immediate termination from employment, and legal action by the individual.
- e. DHS employees who knowingly and willfully violate Federal or State law for improper use or disclosure of an individual's PHI are subject to criminal investigation and prosecution or civil monetary penalties.
- f. If DHS fails to enforce privacy safeguards, DHS as a state agency may be subject to administrative penalties by the United States Department of Health and Human Services (DHHS), Office of Civil Rights, including federal funding penalties.

2. Retaliation prohibited

- a. Neither DHS as an entity nor any DHS employee will intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against:
 - i. Any individual for exercising any right established under DHS policy, or for participating in any process established under DHS policy, including the filing of a complaint with DHS or with DHHS.
 - ii. Any individual or other person for:
 - A. Filing of a complaint with DHS or with DHHS as provided in DHS privacy policies;
 - B. Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing relating to DHS policy and procedures; **or**
 - C. Opposing any unlawful act or practice, provided that:
 - I. The individual or other person (including a DHS employee) has a good faith belief that the act or practice being opposed is unlawful; **and**

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- II. The manner of such opposition is reasonable and does not involve a use or disclosure of an individual's PHI in violation of DHS policy.

3. Disclosures by whistleblowers and workforce crime victims

- a. A DHS employee or business associate may disclose an individual's PHI if:
 - i. The DHS employee or business associate believes, in good faith, that DHS has engaged in conduct that is unlawful or that otherwise violates professional standards or DHS policy, or that the care, services, or conditions provided by DHS could endanger DHS staff, persons in DHS care, or the public; **and**
 - ii. The disclosure is to:
 - A. An oversight agency or public authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of DHS;
 - B. An appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or of misconduct by DHS; **or**
 - C. An attorney retained by or on behalf of the DHS employee or business associate for the purpose of determining the legal options of the DHS employee or business associate with regard to this DHS policy.
- b. A DHS employee may disclose limited PHI about an individual to a law enforcement official if the employee is the victim of a criminal act and the disclosure is:
 - i. Only about the suspected perpetrator of the criminal act; **and**
 - ii. Limited to the following information about the suspected perpetrator:
 - A. Name and address;
 - B. Date and place of birth;
 - C. Social security number;

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- D. ABO blood type and rh factor;
- E. Type of any injury;
- F. Date and time of any treatment; **and**
- G. Date and time of death, if applicable.

Guidance for Procedure Development:

The following guidelines should be used in developing procedures to implement this policy.

1. General

- a. DHS employees who violate DHS policies and procedures regarding the safeguarding of an individual's PHI are subject to:
 - i. Appropriate disciplinary action by DHS, up to and including immediate termination from employment.
 - ii. Legal action by the individual, who may want to pursue a tort claim against the State of South Dakota or a lawsuit against the State and the employee.
- b. DHS employees who knowingly and willfully violate Federal or State law for improper invasions of personal privacy may be subject to:
 - i. Criminal investigation and prosecution, both by the State of South Dakota and by the Federal government, depending on the nature of the violation. Federal and State law provides substantial fines and prison sentences upon conviction, depending on the nature and severity of the violation.
 - ii. Civil monetary penalties that the United States Department of Health and Human Services (DHHS), Office of Civil Rights may impose.
- c. Any action taken regarding violations of DHS policies and procedures by any member of the DHS workforce shall be maintained in a written or electronic record for no less than six years from the date of the action.

Form(s):

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- **DHS 2091**, “Privacy Program Statement of Understanding”

Reference(s):

- 45 CFR 164.530

Contact(s):

- For Central Office Staff and Field Office Staff - DHS HIPAA Privacy Office, (605) 773-5990
- For Human Services Center Staff – DHS HIPAA Privacy Contact, (605) 668-3100
- For South Dakota Developmental Center Staff – DHS HIPAA Privacy Contact, (605) 472-2400